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December 17, 2010

VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01- 92; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; ***REPLY COMMENTS OF NORTH COUNTY COMMUNICATIONS CORPORATION REGARDING PROPOSED RULES FOR FREE CALLING COMPANY TRAFFIC***

Dear Secretary Dortch:

North County Communications Corporation ("NCC"), a competitive local exchange carrier ("CLEC") operating in more than a dozen states, by and through its undersigned counsel, hereby respectfully submits its reply comments to be filed in the above-noted dockets.

If Verizon's letter of December 6, 2010, reveals anything, it reveals that Verizon does not want to pay anyone for the carriage of Verizon-originated traffic. Verizon's focus on NCC's chat-line customers is merely a salacious diversionary tactic. Verizon, a purveyor of adult chat-line services for over 25 years, does not want ***any*** other carriers to horn-in on its business and will object to carrying ***any*** chat-line traffic, regardless of the content, unless it is cut-in on a portion of the profit for every call made. Verizon would have no objection to the chat-line traffic NCC's chat-line traffic customers generated if those chat-line customers were buying their local telephone services from a Verizon affiliate as opposed to NCC.

Verizon also attempts to distort the very limited holding in *Farmers*. In that case, the Commission allowed a limited inquiry into the relationship between the carrier and the chat-line customer so that it could determine if the traffic in question met the definition of allowable traffic under the applicable tariff and whether Farmers exceeded its permitted rate of return.[1]

[1] It is vital to recognize that NCC is a CLEC and non-dominant carrier, unlike the rural ILEC, dominant carrier Farmers, and is not constrained by or otherwise subject to rate-of-return regulation or tariffing requirements. *Qwest Comm'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, Memorandum Opinion and Order, FCC 07-175, n.24 (rel. Oct. 2, 2007) ("*Farmers I*").

Although the Commission found that Farmers exceeded the prescribed rate of return, the Commission recognized that even if it were to determine that the traffic were not compensable under the applicable access tariff, that would not end the inquiry into whether or not the traffic were compensable under some other theory of recovery. *Qwest Comm'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, Second Order on Reconsideration, FCC 09-103, n.96 (rel. Nov. 25, 2009) ("*Farmers III*") ("[t]his is not to say that Farmers is precluded from receiving any compensation at all for the services it has provided…").

Nothing in Farmers begins to define chat-line traffic as unlawful, non-compensable, or somehow traffic not deserving of fair compensation under telecommunications law, state PUC law or common law. Apparently, the traffic is "legitimate" enough for Verizon to bill its customers, as the fact remains that Verizon charges its customers for the calls to NCC's customers and refuses to pay rates that mirror its own rates for the very same type of traffic. Verizon must not be allowed to operate on its own set of rules, no matter how large and powerful it has become.

What is also clear from Verizon's letter is the fact that Verizon would like to have the Commission set up a separate set of rules for traffic generated by chat-line or business conferencing providers in any circumstance where the communications carrier that is terminating the calls to that provider is not a large ILEC, and wants to be the ***only*** carrier that can have co-ownership – through an affiliate or otherwise, in a conferencing service. This would work wonders for Verizon's bottom-line, as it would force all of the chat-line providers which are owned or managed, in any degree, by a telecommunications carrier (or an affiliate) onto the Verizon network, or onto the network of another major carrier. Nowhere in the *Farmers* decision is there any reference to co-ownership, commissions or other relationship-based inquiries except for the very limited purpose of making a determination on the question of whether the traffic falls under the applicable high cost rate of return tariff. Nowhere is there any suggestion that co-ownership or commissions, express or otherwise, results in a denial of compensation for the carrier. The *Total Tel* case made it clear: the traffic is compensable; you just can't "double dip." *Total Telecommunications Serv., Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5726 (2001).

As set forth in NCC's prior correspondence, Verizon's marketing of "package" plans force customers to purchase unlimited long distance services at exorbitant prices. For instance, the local switching rate in Arizona is $.003/minute. Verizon charges $52.99/month for unlimited long distance. A customer would have to spend 17,633 minutes on the phone in one month to use the entire $52.99. Even in a NECA high cost area the customer would have to call on a chat-line for over 1,700 minutes per month to break even on the monthly charge. Whatever happened to the days when a customer could choose to pay five cents for a long distance call where you didn't have to buy one of Verizon's high-priced, "all-you-can-eat" long distance plans? They are gone forever, if Verizon has its way, and Verizon will have its way, as long as the Commission fails to take action.

NCC would ask the Commission to examine Verizon's December 6, 2010 letter closely, as Verizon is quite used to claiming its reasoning is the correct one, simply because they say it is. [2] Verizon's letter is devoid of any basis in reason for most of its bold statements, hoping that the Commission will forget that Verizon has paid ***nothing*** for the hundreds-of-millions of minutes NCC and other small competitive carriers have terminated for Verizon's customers who have ***chosen***, as is their right, to call these chat lines and business conferencing services. The Commission should also remember that Verizon has billed such customers under calling plans designed to take advantage of the very fact that Verizon has the brute power to simply refuse to pay for the termination services provided by small competitive carriers which are at the mercy of Verizon's predatory practices. So, the bully goes to the regulators for a blessing to keep doing what it has now done for years – forcing customers to pay for all-you-can-eat plans knowing that it will never have to pay for those instances where such plans prove not-so-profitable for Verizon. One simply needs to look at Verizon's balance sheet to see that it isn't hurting.

In an attempt to sway regulators into believing free or advertiser supported products are evil, Verizon is attempting to smear NCC and other chat line providers by calling a free chat line pornographic. Verizon is attempting to convince the Commission to require that all chat lines only be on Verizon's 900 and/or 976 product(s). Such a move would increase the cost to the consumer by as much as 20 times. Verizon's justification? If the consumers pay more for the service, it is legitimate. This false logic also fails for the simple reason that not only is there a premium charge on the 976 calls, but if the call was made long distance, Verizon also charges the exact same access rate that NCC is charging. Verizon is calling "free" business conferencing providers traffic pumpers and trying to force them to follow the pricing model Verizon uses, even though in addition to the fees Verizon charges, it also charges the exact same access fees of those so-called "traffic pumpers." For Verizon, if Verizon makes more money, it is good, but if the consumers pay less, it is bad.

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[2] In fact, Verizon relies on dubious assumptions and "statistics" which have no foundation in fact, and which have, in prior hearings before the Commission, been exposed for what they are – nonsense. (*See* North County's *ex parte* notice in CC Docket No. 01-92 and WB Docket No. 07-135 submitted by Jonathan E. Canis, Arent Fox LLP, dated November 18, 2010.)

Even though the Commission made it clear in the *Farmers* decision that its analysis was limited to *Farmers* (*see, e.g., Farmers III*, ¶24 (noting that the case turned on "unusual facts")) , if you were to believe Verizon's interpretation of *Farmers*, then Verizon would be one of the biggest regulatory violators of all. For instance, Verizon owns one of the largest dial-up ISP networks in the country, which service is provided by a Verizon affiliate. Although this affiliate certainly receives free or discounted phone service from Verizon and even collocates in Verizon's central offices, Verizon charges other carriers access fees and/or reciprocal compensation to call those numbers. In addition, a Verizon affiliate is one of the largest teleconferencing services in the country. Again, the Verizon affiliate almost certainly receives free phone service from Verizon, yet Verizon charges other carriers access and/or reciprocal compensation fees to call these numbers.

In addition to the examples above, Verizon has numerous other arrangements in which it charges access fees to other carriers pursuant to its tariff even though the end user receives service from Verizon for free, at a discount, or under contract. Verizon has virtually the identical language in its tariff that Farmer's has in their tariff. Under Verizon's argument, Verizon's collection of access fees or reciprocal compensation related to any free or discounted service it provides to its former employees, any of its 220,000+ employees, dial up ISP numbers, business conferencing services, talking yellow pages, or even customers who purchase service by contract instead of under their tariff would entitle carriers to massive refunds for all of those fee/compensation payments.

Verizon attempts to justify its hypocrisy by saying that if the ILEC or CLEC (excluding itself, of course) pays a commission or is owned/controlled by an affiliate, then the access fees are too high. What Verizon has failed to tell the Commission is that Verizon has a "commission" agreement with Verizon Wireless to share in the access fees ***for all toll-Free calls*** that Verizon Wireless routes through Verizon. We are mystified how Verizon can say, on the one hand, that if their competitor pays commissions, then their competitor's access rates are too high, but when Verizon does it, the rates are "reasonable."

There is one simple solution to access rates: A tiered, step-down rate based on minutes of use. This solves all the problems – real or imagined concerning high cost areas. It allows higher fees in high costs areas that don't have high volume calls and it removes any incentive for rate of return fraud. In following with the Telecom Act of 1996, it also allows the chat line provider and business conferencing providers to choose the carrier of its choice or locate where it wishes to locate, something that Verizon is hoping this Commission will overlook. Finally, and most

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importantly, it will save the consumer money by allowing CLECs to fairly compete with the ILECs 976 and 900 services for entertainment and the ILEC's business conferencing services.

If a CLEC is matching the ILEC access fee and the ILEC access fee is reasonable, then there is no issue. Verizon and/or other IXC's should pay the rate. If the rate of the ILEC is not reasonable, the Commission should force the ILEC to charge a reasonable rate.

It is time for the Commission to end all these cases around the country and clearly define the rules. Businesses can't operate when there are not clearly defined parameters for all to follow, including Verizon. The Commission is holding up the free market and delaying recovery in the telecom field by causing instability and uncertainty.

Very truly yours,

DICKS & WORKMAN, APC

Joseph G. Dicks

JGD/jh